IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10133 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDIAN PETROCHEMICALS CORP.LTD - Petitioner(s)

Versus

ISHWARBHAI DHULABHAI DABGAR - Respondent(s)

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Appearance :

NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR RAJESH P MANKAD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/11/2005

ORAL JUDGMENT

1. The petitioner herein challenges the order dated 29.01.2003 passed by the Labour Court, Vadodara in Reference (LCV) No.851/88, whereby the Labour Court has directed reinstatement of the respondent with 30% backwages and continuity of service on his original post and to pay Rs. 4000/- as costs.

2. The short facts of the case are as under:

2.1 In accordance with the policy of the petitioner company to provide employment to only one member of the family, after following due procedure of recruitment, the respondent was appointed as a probationer. He then, joined his duty on 17.07.1987.

2.2 The respondent filled in Declaration Form showing the details of his family. In column No.4 of that Declaration Form asking for the details of family members, only two names i.e. names of his father and mother were mentioned, whereas the name of his brother who was already employed in the petitioner company was not mentioned.

2.3 As a result, when the above fact was brought to the notice of the company within a period of less than two months from the date of appointment and during the probation period, the petitioner discharged the services of the respondent for the said misconduct. Against the said order, the respondent preferred an appeal before the petitioner company which was rejected on 16.10.1987.

2.4 Ultimately, the respondent raised a dispute which came to be referred to the Labour Court, Vadodara and numbered as Reference (LCV) 851/88.

2.5 The Labour Court, vide its order dated 29.01.2003 held that an inquiry was necessary. Although, the petitioner prayed for an opportunity to lead evidence and prove the misconduct, the Labour Court straight-away directed the petitioner to reinstate the respondent as stated above. The above order has been challenged in this petition.

3. Mr Keyur Gandhi, the learned advocate appearing for M/s Nanavati Associates for the petitioner has submitted that in para 9 of the written statement, the petitioner has also stated that if inquiry was necessary, the petitioner may be given an opportunity to lead evidence and prove the misconduct committed by the respondent. Para 9 of the written statement reads as under:

> “Alternatively and without admitting the case of the claimant and without prejudice to the above contentions of the Company, in case the Hon'ble Court comes to the conclusion by preliminary order that as inquiry was necessary in the instant case, it is prayed that the Company may be permitted to adduce further evidence before the Court”.

However, the Labour Court without giving any opportunity straight-away set aside the order of discharge and directed the petitioner to reinstate the respondent.

4. In view of para 9 of the written statement, the Labour Court ought to have allowed the petitioner management to lead evidence. Such permission was not granted. Therefore, I am of the view that the matter requires reconsideration by the Labour Court.

5. As a result of the hearing and perusal of record, a consensus has been arrived at between the parties to remand the matter to Labour Court.

6. In the premises aforesaid, the petition is partly allowed. The order of the Labour Court is quashed and set aside. The matter is remanded to the Labour Court for fresh decision. The Labour Court shall hear and decide the matter within six months from the date of receipt of the writ of this court. Rule made absolute to the aforesaid extent. No order as to costs. Direct Service to the respondent.

(K.S. JHAVERI, J.)

Divya//